IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR
NO. 3/2007

M/s. South West Port Ltd.
Formerly known as
M/s. ABG Goa Post Limited,
A Company incorporated and
registered under the Indian
Companies Act, 1956, Mormugao,Goa. ..... Appellant.

V/s.

The Board of Trustees of
Mormugao Port, constituted under the
Major Port Trusts Act, 1963, having its
Office at Headland Sada,
Mormugao, Goa. ..... Respondent.

Mr. Sudin Usgaonkar and Ms. Rajani Kamath, Advocates for the appellant.
Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni, Advocate for the respondent.

CORAM : R.S. MOHITE, J.

DATE : OCTOBER 19, 2007

ORAL O R D E R :

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

2. The brief facts of the case are that by a licence agreement dated 11.4.99, the respondent permitted to the applicant to use on licence basis a water area of about 60,500 sq. metres and the land area of about 40,200 sq. metres for construction of a terminal as was described in Appendix V of the licence agreement. The said licence agreement admittedly contained an arbitration clause. It appears that the applicant found that there was a pipeline under a small area of 866 sq. metres out of the area allotted to them and that the existence of this pipeline prevented them from fruitfully using the said area as they desired. They, therefore, made a grievance about this to the respondent sometime in the year 2005. Prior to that, on 8.7.04, the respondent had granted to the applicant a constructed shed admeasuring 678 sq. metres, termed as “S-1 Shed” which was on the boundary of the land earlier allotted to them on leave and licence. The said licence agreement did not contain an arbitration clause.

3. In view of the grievance made by the applicant regarding their difficulty in using the small part of the land mentioned as aforesaid granted on licence, by a Resolution dated 26.8.05, the respondent resolved to grant some alternate land which included S-1 shed to the applicant. By their letter dated

17.9.05, after referring to the said resolution, the respondent informed the applicant that the allotment of equivalent area in lieu of the area under the applicant's possession where IMC pipelines have been laid underneath, had been referred to the Board in its meeting held on 26.8.05 and that the Board vide its Resolution had resolved for allotting to the applicant the existing S-1 shed (678 sq. metres), a small strip of land in front of S-1 shed (28 sq. metres) and an area admeasuring 160 sq. metres on the eastern end of the licenced premises, total area being 866 sq. metres and to take over from the applicants an equal area of 866 sq. metres at the southern boundary which was already alloted to the applicants. The letter mentioned that if the applicant demolished the S-1 shed in future with due intimation to the port, then the applicant would have to deposit the value of salvage as per agreement Clause No.5.1 F of the agreement. Lastly, a sketch indicating the area to be taken and area to be handed over was enclosed and the applicant was requested to have a proper joint survey and sign the required agreement with the port immediately.

4. By a further letter dated 18.10.2005, it was recorded that a joint survey had already been carried with a view to give effect to the resolution of the Board meeting dated 26.8.05. It

was further mentioned in the letter that the applicant would be required to sign an agreement for effecting this exchange of area, the draft of which would be sent to the applicant shortly.

5. It appears that later on, the respondent decided that the exchange could not be effected and, therefore, vide their letter dated 1.4.2006, they withdrew the proposal of exchange.

6. Aggrieved by this, the applicant issued a letter asking for appointment of an arbitrator and since an arbitrator was not appointed within 30 days, the present application came to be filed. After perusing the record, it appears that though there was some proposal for exchange, there was no agreement signed and contract executed as required under Section 34 of the Major Port Trust Act, 1963. The licence agreement was not in respect of the shed S-1 and the land around it which was proposed to be allotted to the applicant. In the absence of there being any contract under Section 34, I find that there is no arbitration agreement. The application, therefore, cannot be entertained and is dismissed. It is made clear that any observations made in this order will not be used by the parties before any other forum, court or authority before which independent proceedings may be initiated and that the question of title, if any, or eviction may be

resolved by the concerned authorities, independently.

Application disposed off.

R.S. MOHITE, J.

ssm.